

Summary of the doctoral dissertation entitled "Protection of religious feelings under the Polish criminal law"

The aim of the study is to analyse protection of religious feelings under criminal law and provide an answer to the question whether the concept currently in use is justified. The study also attempts to examine and eliminate interpretative discrepancies occurring in the area of both criminal law and case law and associated with the legal concept of the offence referred to in art. 196 of the Polish Penal Code (PPC), which has remained unchanged for nearly 70 years.

The work comprises 5 chapters which deal with the investigated issues. Chapter 1 presents the way the freedoms of conscience, religion, and speech are conceived, as well as the relationships existing among them. The Author addresses the constitutional right to restrict one's rights and freedoms, which can be exercised but the principle of proportionality and the condition of necessity must be respected since each right and liberty has an inviolable foundation. The possibility of restricting the freedom of expression is discussed in the context of a conflict between the freedom of conscience and religion and the freedom of speech. Also, the possibility of asserting one's rights under civil law if one's religious feelings have been insulted.

Chapter 2 presents the evolution of the way the freedom of religion and protection of religious feelings have been perceived over centuries.

The illustration of freedom of conscience and freedom of speech along with their mutual relationship is made complete by the Author, who in Chapter 3 presents resolutions of the European Court of Human Rights concerning conflicts between these freedoms. They are preceded by an outline of regulations that specify the common and European standards of freedom of thought, conscience and religion, with a special consideration of the possibility of limiting the freedom of expression in a manner specified by art. 196 PPC.

Chapter 4 provides a normative analysis and assessment of the construct of offence against religious feelings. The Author addresses the views presented by criminal law scholars as well as judicial decisions issued in cases of insulted religious feelings. The Author also examines the proposal to

define the object under protection, the attributes of the substantive aspect of a prohibited act, such as the action performed, the causal relationship, as well as the attributes of the subjective aspect of offence against religious feelings. Further, recent proposals of amendments to the legal protective measures applied to religious feelings under criminal law are presented; the chapter addresses the rationale behind penalisation of offences involving infringement of these legal goods, and the claims that the absence of protection of religious convictions from art. 196 constitutes infringement of the constitutional principles of impartiality of public authorities in matters concerning one's religious convictions, world view and philosophy (art. 25 para. 2) and equality before the law (art. 32 para. 1). Finally, the possibility of penalising an offender's criminal conduct which reflects his or her artistic freedom is addressed.

Chapter 5 discusses circumstances which exclude criminal liability for an offence against religious feelings. Also, proposals to create an art-based non-legal justification are examined, i.e. the possibility to exclude the perpetrator's liability if the injured party consented to such an eventuality by deliberately coming into contact with the content which would harm his or her religious feelings in order to report a crime. Since the possibility to exclude one's liability due to the victim's consent (non-legal justification based on art) has been ruled out, the Author analyses the possibility of qualifying types of conduct which satisfy the criteria of offence against religious feelings as one of several statutory non-legal justifications.

The dissertation corroborates the stipulated theses, indicating that it seems valid to maintain the existing form of the protection under criminal law, thus outlining the limits of freedom of speech and artistic expression. The existence of criminal law protection of religious feelings is not only permitted by the Polish law but it is simply necessary. There are no grounds to believe that in a situation when religious feelings have been injured, exclusion of criminal liability can take place on the basis of a non-legal justification based on art or the victim's consent. Likewise, it seems unfounded to introduce the postulated amendment of art. 196 PPC since it effectively protects **religious feelings**.